



August 30, 1999

Ms. Carol Browner, Administrator
US Environmental Protection Agency
401 M Street SW
Washington DC 20460-0003

Dear Ms. Browner:

As I am sure you're aware, a consortium of environmental groups, headed by the National Wildlife Federation, recently filed suit against the U.S. Army Corps of Engineers (Civ. No. '99-442). In the suit the environmental groups allege violations of the Clean Water Act by the four federal projects on the lower Snake River in Washington State. Specifically, they allege violations of the temperature and total dissolved gas standards established by the State of Washington pursuant to the Clean Water Act.

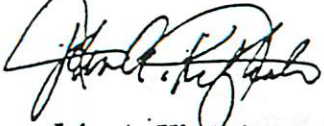
This is an extremely important issue for the states of the Northwest. All four states in EPA Region X have recently engaged in prolonged negotiations to settle TMDL lawsuits. In so doing, the states have gained clarity on the elements that constitute an approvable TMDL, and have established aggressive schedules for their completion.

The Snake and Columbia River mainstems are listed as water quality limited for a variety of parameters by both Oregon and Washington, including temperature and total dissolved gas. The pollutants that gave rise to the listing emanate from a number of sources, including the federal dams on both rivers. If the states are to comply with their TMDL schedules, it is essential that the U.S. Army Corps of Engineers is engaged in developing TMDLs, is willing to accept load allocations for its projects, and is committed to implementing measures designed to assure compliance with water quality standards.

To date, Oregon has not filed to intervene in this lawsuit, expecting instead to rely on EPA to ensure full implementation of the Clean Water Act, and the role that states play in relation to that Act. I am concerned, however, that in defending itself, the U.S. Army Corps of Engineers, acting through the U.S. Department of Justice, may intentionally or inadvertently construct a defense that it is not fully subject to the provisions of the Clean Water Act. The Corps may argue either that it is not obliged to comply with the Act outright, or that it will make every reasonable effort, but need not attain water quality standards. Neither of these defenses is acceptable to the State of Oregon.

I therefore urge you to take a very strong stand in your discussions with the U.S. Department of Justice and the U.S. Army Corps of Engineers to ensure that in mounting a defense in this lawsuit that you not prejudice the work of the States in TMDL development. We are in discussions with many constituencies throughout the State; including industry, municipalities, agriculture and forestry exhorting them to shoulder their share of the burden of returning our waters to standards compliance. To have the federal government argue that it should not have to shoulder its share would seriously prejudice our efforts.

Sincerely,



John A. Kitzhaber, M.D.

JAK/NR/sw